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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,893	08/18/2003	Terry Vovan	03/143	3878

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EXAMINER

THAKUR, VIREN A

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/645,893		VOVAN, TERRY	
	Examiner		Art Unit	
	Viren Thakur		1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

- A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-7 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-7, 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The rejection of claim 14 under 35 U.S.C. 102(b) as being anticipated by Kalmanides et al. (US 5613607) has been withdrawn
2. The rejection of claims 1-3 and 15 under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (US 5613607) in view of Elwell (US 1515560) has been withdrawn.
3. The rejection of claim 4 under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Elwell (U.S. 1,515,560) and further in view of Martinelli (U.S. 3,854,582) has been withdrawn.
4. The rejection of claim 8 under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (US 5613607) in view of Elwell (US 1515560) and further in view of Dahl (U.S. 3,690,902) has been withdrawn.
5. The rejection of claims 9-12 under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Martinelli (U.S. 3,854,582) has been withdrawn.
6. The rejection of claim 13 under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (U.S. 5,613,607) in view of Martinelli (U.S. 3,854,582) and in further view of DeRosset (U.S. 4,197,940) has been withdrawn.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 5-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Instant claim 5 recites the limitation "whereby to allow a person to view a dimple as it moves in a dimple receiving region." The disclosure provides support for a transparent cover whereby the buyer can see the pastry; however, the disclosure has not reasonably conveyed to the skilled artisan that viewing the dimple as it moves into a dimple receiving region has been disclosed in the instant application.
9. Instant claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The instant claim recites the limitation "a plate." The instant claim recites wherein the base and the plate are not the same article. The disclosure, while supporting a base and a cardboard sheet but does not provide support for a plate lying against the bottom of the cake.
10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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11. Claims 5-7 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- a. Claim 5 recites the limitation "on the order of." The phrase "on the order of" renders the claim indefinite since it is not clear as to what can be considered an order of 0.02 inch.
 - b. Claim 7 recites the limitation "the radial depth." There is insufficient antecedent basis for this limitation in the claims. It is not clear as to what radial depth the instant claim refers.
 - c. Claim 20 recites the limitation "about one inch." This limitation is broad and indefinite since it is not clear as to what can be considered about one inch.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
- 1. Determining the scope and contents of the prior art.
 - 2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (US 5613607) in view of Elwell (US 1515560) and Wexler (US 4938688). Kalmanides et al. in view of Elwell teach the limitations of the instant claims, as discussed in the previous Office Action, mailed October 11, 2006.

Kalmanides et al. is silent in teaching wherein the base and cover are formed of a plastic sheet of a thickness on the order of 0.02 inch.

Wexler teach a cake container (Figure 5) wherein a thickness of between 0.01 and 0.05 inches has been "found to represent a satisfactory compromise between strength and economy." (Column 2, Lines 42-47)

Kalmanides et al. teach the product holding and displaying container system is constructed from "thin plastic material" (Column 6, Lines 15-17; Column 10, Lines 32-36). Kalmanides et al. further teach wherein the transparent cover (Figure 16, Item 54) can be of any desired size and shape (Column 10, Lines 42-53) but should also provide easy viewing of the cake contained within the container (Column 6, Lines 31-42). Additionally, in light of the rejection under 112, second paragraph, above, it would have been obvious to use a thickness on the order of 0.02 inch for the purpose of allowing the user to easily view the cake inside the container. Wexler analogously teach a cake container wherein a thickness has been found as an effective compromise between strength and economy. Kalmanides et al. also teach wherein a thin plastic material should be used so that the containers are comparatively inexpensive to manufacture (Column 10, Lines 32-42). Given these teachings it would have been obvious to the skilled artisan to use a thickness on the order of 0.02 inches for the purpose of providing strength and stability while also minimizing manufacturing costs.

Regarding the new limitations to instant claim 5, Kalmanides et al. teach a transparent cover (Column 6, Line 30-42) and further teach wherein said cover (Figure 16, Item 54) overlaps the base (Figure 16, Item 70). In this arrangement, since the cover is transparent, the ridges (Figure 16, Item 60) would be visible as they move through the receiving cavity.

15. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (US 5613607) in view of Elwell (US 1515560). The rejection is taken as cited in the previous Office Action, mailed October 11, 2006.
16. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (US 5613607) in view of Zaikaner (D156860) and Portnoy (US 4991811). Kalmanides et al. is taken as cited above. Zaikaner teach a container wherein the base comprises radially extending portions that converge towards each other at locations farther from the center of the base (See Figure 3). Portnoy similarly teaches a cake platter base comprising similar radially extending portions (Figure 2, Item 34), and a circular band (Figure 2, Item 16) radially outwardly spaced from said star. Portnoy further teaches wherein the extending portions (that form a star) are used for strengthening the plate (Column 4, Lines 35-38). Although the radially extending portions of Portnoy do not converge, Zaikaner teaches a similar configuration wherein the radial portions do converge. It would have been obvious to the skilled artisan, given the teachings of Portnoy that radially extending portions, such as those of Zaikaner, provide rigidity and support for a circular base of a container. Therefore, converging the radially extending portions would have been a matter of choice, which a person of ordinary skill in the art would have found obvious (See MPEP 2144.04 IV.B). It would have been obvious to the skilled artisan that the radially extending portions of Portnoy and Zaikaner would have performed the same function; thus to use converting radial portions would not have provided a patentable feature over the prior art.

17. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (US 5613607) in view of DeRossett (US 4197940). Gics (US 5888565) is cited as evidence, as discussed below. Kalmanides et al. is taken as cited above. Kalmanides et al. is silent in teaching wherein the cake container further includes a base and a plate; wherein said plate has a label on a lower surface thereof.

DeRossett discloses a circular cake tray and cover wherein the cake plate (Figure 1, Item 105) comprises a cake supporting surface (Figure 1, Item 160), grooves (Figure 1, Item 165) and a central cylindrical recess (Figure 1, Item 170) for the purpose of providing matching grooves and recesses that will stabilize said plate (Figure 1, Item 105) within the cake tray (Figure 1, Item 115) to prevent damage to the cake, caused by movement of the cake plate (Column 1, Line 6-23).

It would have been obvious to a person having ordinary skill in the art to modify Kalmanides et al. to include a base having a central cylindrical recess as taught by DeRossett for the purpose of providing a plate structure that secures itself to a tray through the use of matching grooves and recess. Such a modification prevents the shifting of the contents, which are disposed on the base of the container, and thus prevents damage of the contents when said container is tipped over.

Regarding the label, it would have been obvious to provide a label on the underside of the plate (Figure 1, Item 105) of DeRossett. Gics is cited as evidence that it has been well known to add nutritional labeling to the back portions of containers (Column 2, Line 56 to Column 3, Line 2) used for pastries (Column 1, Line 9). On page 9, lines 8-10, of the specification, Applicant also appears to acknowledge that it has been common practice to have nutrition information affixed to the underside of a cake sheet. Given that the plate of DeRossett would have been secured for the reasons cited above, it would have

been obvious to apply a nutritional label to the underside of the plate of DeRossett, since application of nutritional information to the underside of a container has been well known in the art. Such a modification would have prevented the label from tearing or being defaced, since it would be snugly secured between the plate and the base.

Response to Arguments

18. Applicant's arguments with respect to instant claims 5-7 and 18-19 have been fully considered but are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Kalmanides et al. teaches a ridge on the cover and the receiving cavity on the base, as further exemplified by Figures 16 and 25. Although this is opposite of the orientation of Applicant's invention, Kalmanides et al. discloses both a dimple and a dimple receiving cavity and thus teach the inventive concept of an engaging and locking mechanism that facilitates opening and closing of the cover, which as a result prevents damage to the food product disposed therein. For instance, on Column 13, lines 60-67, Kalmanides et al. further teach wherein a snapping sound would be achieved when locking said cover to said base; thus signifying to the user that the cover has indeed engaged and locked with the base. As stated on Column 2, Lines 19-31, 37-42, and 50-56, Kalmanides et al. teach wherein an object of the invention is an interlocking means that is easy to use and also prevents damage to the decorations or frosting on food products such as cakes.

Applicant argues that Kalmanides et al. does not show Applicant's chimney. The Examiner asserts that Kalmanides et al. teach vertically extending

hollow chimneys (Figures 14 and 23, See above item 80). Figures 14, 16, 23 and 25 further teach wherein the incline and chimney, that receives the ridge (Figure 13 and 26, Item 60; Column 13, Lines 14-19), is external. Regarding narrowing transition locations, Kalmanides et al. further teach this limitation in Figure 23, (See diagonally between item 77 and 81); wherein, each transition location has a constriction (Figure 23, See diagonally between item 77 and 81; Figure 23, Item 82) that resists turning of said cover on said base to move one of said dimples through the construction into one of said chimneys. Regarding the narrowing, Kalmandies et al. teaches wherein the narrowing section has radial depth along a radius to the vertical container axis (Figure 23, between item 77 and 81), thus Kalmanides et al. teach the limitation of instant claim 7. Furthermore, the ridge (Figure 26, Item 60) is snapped into the receiving cavity (Figure 27, Item 78; Column 13, Lines 60-67) thus preventing movement of the ridge in any coordinate direction (x, y and z). Therefore, it would have been obvious to the skilled artisan to expect a similar function from the locking mechanism of Kalmanides et al. as that of the Applicant's invention. Changing the arrangement of the parts or the orientation of the parts would not change the function of the parts of Kalmanides et al.; which as discussed above provide a similar function to that of the Applicant.

Elwell is relied on to teach that it has been well known in the art to use a closure arrangements wherein the base comprises the dimple and the cover comprises the dimple receiving cavity. The two components are engaged by mating the respective components and then turning the cover to lock said cover to said base. Thus, although Kalmanides et al. does not teach the specific structure of the dimple on the base and the receiving cavity on the cover, Elwell is relied on as knowledge that "bayonet" type closures and locking means have been well known in the prior art for securing a lid to a base. Elwell further teach providing grooves in the receiving cavity (Figure 1, Item 30) that would "effectively retain the lid or closure member upon the receptacle" so as to prevent accidental detachment (Page 2, Lines 29-34). Thus, Elwell teaches the need for

a frictional engagement that secures the lid to the container so as to prevent accidental detachment of the cover therefrom. Additionally, Gasbarra et al. is relied on as further evidence that engagements that lock a projecting dimple within a receiving cavity (Column 2, Lines 22-41; Figure 4, Item 70; Column 4, Lines 66-70), have been well known in the prior art. Although Kalmanides et al. teach the dimples on the cover of the container and the receiving cavities on the base of the container, the above teachings provide motivation that changing the location of the dimple and the dimple receiving cavity would not have modified the operation of the container, and thus would not have provided a patentable feature over the prior art (See MPEP 2144.04 VI).

Applicant argues that deflection of parts in Kalmanides' mechanism would be undesirable; however Applicant has not provided any substantiation for this argument. The Examiner asserts that the cover and base of Kalmanides et al. can be made from plastic and further wherein said locking means generates an audible snap to signify locking (Column 13, Lines 60-67). Therefore, it would have been obvious to the skilled artisan that the locking parts would be capable of deflection, since an audible sound on plastic would require deflection. The Examiner further asserts that the instant claims recite wherein the dimples "can deflect radially." Since the prior art discloses dimples made from plastic, said dimples would have been capable of radial deflection. Elwell teaches wherein the container can be made of any approved material (Page 1, Lines 58-61), thus the dimples of Elwell are *capable* of being deflected (i.e. deflectable).

Applicant argues that a person cannot readily see the flanges of Kalmanides through two layers of plastic. The Examiner asserts that this argument is not commensurate in scope with the claims. Although claims are read in light of the specification, limitations from the specification cannot be brought into the claims. Therefore, although Applicant argues that a person cannot readily see the flanges through the two layers of plastic, Applicant's claims do not recite such a limitation.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur
Examiner
Art Unit: 1761



KEITH HENDRICKS
PRIMARY EXAMINER